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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/244,961	02/04/1999	BRUCE BUTLER WRIGHT	NA-1147	4379 18

7590 04/30/2003

OFFICE OF CHIEF COUNSEL  
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EXAMINER

ALEXANDER, LYLE

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 04/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

inv -18

<b>Offic Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/244,961	Wright
	<b>Examiner</b>	<b>Art Unit</b>
	LYLE A ALEXANDER	1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 February 2003.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The new amendments to the claims are confusing what is intended by a "history having a reference ....". It seems the comparator is the element that has a predetermined color that is the cumulative equivalent to 80' F over 3 years and not the "history".

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taoukis et al. alone or in view of Olsen et al. and either further in view of Applicant's admitted prior art (see page 2 lines 12-18).

See the appropriate paragraph of paper 13 for the teachings of Taoukis et al. alone or in view of Olsen et al.

Taoukis et al. alone or in view of Olsen et al. is silent to the claimed "reference of 80'F over three years ....".

Applicant teaches on page 2 lines 12-18 "One commercially available "bull's eye" type of TTI is based on a shelf life of three years at 80'F .....". It would be desirable to

use a well known commercially available color comparator to gain the advantage of using an industry recognized cumulative time period and not having to devote the resources to manufacture one.

The court decided In re Boesch (205 USPQ 215) that optimization of a result effective variable is ordinarily within the skill of the art. A result effective variable is one that has predictable and well known results. The choice of a time period is a result effective variable.

It would have been within the skill of the art to modify Taoukis et al. alone or in view of Olsen et al. and either further in view of Applicant's admitted prior art (see page 2 lines 12-18) and select the time period of three years at 80'F to gain the above advantages. Additionally it would have been within the skill of the art to select the time period of three years at 80'F as selection of a well known time interval and optimization of a result effective variable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYLE A ALEXANDER whose telephone number is 703-308-3893. The examiner can normally be reached on MONDAY,WEDNESDAY,FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JILL WARDEN can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-3330 for regular communications and 703-872-3331 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



LYLE A ALEXANDER  
Primary Examiner  
Art Unit 1743

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April 29, 2003